

ORIGINAL

REC'D & FILED ✓

2016 MAY 23 PM 3:41

Edward L. Oueilhe, Esq., deputy
Nevada Bar No. 8218
Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
Carson City, Nevada 89701
Attorney for Appellant Gregory Felton

SUSAN MERRIWETHER

Electronically Filed
Jun 06 2016 02:06 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

GREGORY FELTON,

Petitioner,

vs.

CASE NO. 15 OC 00048 1B

DOUGLAS COUNTY; PUBLIC AGENCY
COMPENSATION TRUST; and APPEALS
OFFICE of the DEPARTMENT OF
ADMINISTRATION,

DEPT. NO. I

Respondents.

NOTICE OF APPEAL

TO: DOUGLAS COUNTY AND PUBLIC AGENCY
COMPENSATION TRUST, and

its attorney of record,
ROBERT F. BALKENBUSH, Esq.;

Notice is hereby given that pursuant to N.R.A.P. 4,
GREGORY FELTON, by and through his attorney, EDWARD L. OUEILHE,
Esq., deputy, Nevada Attorney for Injured Workers, hereby appeals
to the Supreme Court of Nevada from the Order entered in this
action on the 2nd day of February, 2016, wherein the subsequent
Notice of Entry of Order was filed on the 26th day of April,
2016, which is attached hereto as Exhibit A.

//

1 The Nevada Attorney for Injured Workers is a state
2 agency exempt from fees and therefore is filing no cost bond.

3 DATED this 18th day of May, 2016.

4 NEVADA ATTORNEY FOR INJURED WORKERS

5 

6 Edward L. Oueilhe, Esq., deputy
7 Nevada Bar No. 8218
8 1000 E. William Street, Suite 208
9 Carson City, Nevada 89701
10 Attorney for Appellant Gregory Felton
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

EXHIBIT A

MAILED
FILED
FEB 04 2015
DEPT. OF ADMINISTRATION
APPEALS OFFICER

**NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEAL OFFICER**

In the Matter of the
Industrial Insurance Claim

Claim No. C143-12-06693 01

of

Hearing Nos. 47153-KD
47154-KD

GREGORY FELTON

Appeal No. 47863-WDD

DECISION AND ORDER

Background

In this contested case, the claimant Gregory Felton (hereinafter "Felton"), was represented by Edward Oueilhe, Esq., Deputy Nevada Attorney for Injured Workers. The employer, Douglas County, and the insurer, Public Agency Compensation Trust (hereinafter "PACT"), were represented by Robert Balkenbush, Esq., of the law firm of Thorndal, Armstrong, Delk, Balkenbush & Eisinger. The current third party administrator of Felton's year 2012 workers' compensation claim at issue in this contested case is Alternative Service Concepts, LLC (hereinafter "ASC").

By written determination dated November 11, 2013, ASC, on behalf of Douglas County and the PACT, notified Felton that it had calculated his average monthly wage (AMW) under his workers' compensation claim herein at issue (Claim No. C143-12-06693-01), and further advised that this calculation was based upon the statutory deemed wage of a search and rescue volunteer. See, Exhibit No. 3 at p. 1; Exhibit No. 4 at pp. 98-99.

Felton disagreed with ASC's November 11, 2013, determination and, therefore, he timely

1 initiated an appeal from that determination to a hearing officer and Hearing No. 47153-KD was
2 assigned to his appeal. *See*, Exhibit No. 3 at pp. 2-3.

3 By written determination dated November 13, 2013, ASC, on behalf of Douglas County and
4 the PACT, awarded Felton a one percent (1%) permanent partial disability (PPD) or whole person
5 impairment (WPI) as a result of his work-related left knee injury. *See*, Exhibit No. 3 at pp. 4; Exhibit
6 No. 4 at pp. 100-03.

7
8 Felton disagreed with ASC's November 13, 2013, determination and, therefore, he timely
9 initiated an appeal from that determination to a hearing officer and Hearing No. 47154-KD was
10 assigned to his appeal. *See*, Exhibit No. 3 at pp. 5-6.

11
12 Following a hearing and by written decision dated February 20, 2014, made under Hearing
13 Nos. 47153-KD & 47154-KD, Hearing Officer Katherine Diamond affirmed both the November 11,
14 2013 and November 13, 2013, written determinations made by ASC. *See*, Exhibit No. 3 at pp. 7-9.

15 Felton disagreed with the Hearing Officer's decision made under Hearing Nos. 47153-KD
16 & 47154-KD and, therefore, he timely appealed from that decision to an Appeals Officer and Appeal
17 No. 47863-WDD was assigned to his appeal. *See*, Exhibit No. 3 at pp. 10-12. At the time of the trial
18 of this contested case (Appeal No. 47863-WDD), Felton informed the Appeals Officer, Douglas
19 County and the PACT that he no longer disagreed with the November 13, 2013, determination made
20 by ASC that awarded him a 1% PPD or WPI for his work-related left knee injury, nor did he disagree
21 with the decision made by the Hearing Officer under Hearing No. 47154-KD that affirmed the legal
22 propriety of this November 13, 2013, determination. Hence, the decision in this contested case
23 (Appeal No. 47863-WDD) will solely resolve the issue whether AMW determination made by ASC
24 in its November 11, 2013, determination was proper under the law.

25
26
27 The trial of Appeal No. 47863-WDD was conducted on August 25, 2014. Mr. Felton
28

1 personally appeared and provided brief testimony at the hearing of this appeal. No other witnesses
2 testified in this matter. Six (6) documentary exhibits were admitted into evidence. In addition,
3 written closing arguments were submitted by legal counsel for the parties.
4

5 Having considered the documentary exhibits admitted into evidence at the trial of this case,
6 the testimony of claimant Gregory Felton, as well as written closing arguments made by legal
7 counsel for the parties, the Appeals Officer hereafter makes the following findings of fact,
8 conclusions of law, and order.

9 **Summary of Decision**

10 In March 2012, when the left knee injury at issue in this contested case was incurred, Felton
11 was a mere volunteer, there was no statute providing that such volunteers were “employees” who
12 had a “deemed wage” for the purpose of insurance coverage and benefits under the Nevada Industrial
13 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA). Indeed, NRS 616A.157
14 was enacted and became law on May 21, 2013, which is one year and two months after the
15 incurrence of Felton’s injury as a search and rescue volunteer with Douglas County. *See*, Assembly
16 Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada Legislature
17 intended this statute to be applied retroactively. Indeed, the enactment of this statute in year 2013
18 indicates that at the time Felton’s March 2012 left knee injury was incurred, “search and rescue
19 volunteers” were not employees with a deemed wage under any other category of volunteers with
20 a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton’s injury in March 2012, he
21 had no deemed wage as a volunteer to consider aggregating with wages from concurrent
22 employment.
23
24
25

26 There are several additional legal reasons that support the conclusion reached in this
27 contested case.
28

FINDINGS OF FACT

1
2 1. In March 2012, Felton was employed with Douglas County as a search and rescue
3 volunteer. *See*, Exhibit No. 4 at pp. 1-2, 7.

4
5 2. On or about March 6, 2012, Felton suffered an injury to his left knee while participating
6 in a snow and avalanche rescue training. *See*, Exhibit No. 4 at pp. 1-2, 7. At the time of that this
7 left knee injury was incurred, it appears that Felton was also employed by Hewlett Packard. *See*,
8 Exhibit No. 2; *see also*, Trial Transcript.

9
10 3. For his March 2012 left knee injury, Felton initiated a workers' compensation claim with
11 Douglas County, and its workers' compensation insurer, the PACT, assigned Claim No. C143-
12 12-06693-01 to Felton's claim, and workers' compensation insurance coverage of his left knee
13 injury was granted. *See*, Exhibit No. 4 at p. 17.

14
15 4. Following medical treatment of Felton's left knee injury, and on or about November 5,
16 2013, Felton was evaluated for a permanent partial disability (PPD). *See*, Exhibit No. 4 at pp. 3-
17 6, 15-16, 18-90, 94-97; Exhibit 5. Nevada rating physician Jay Betz, M.D., assessed Felton as
18 having suffered a 1% whole person impairment (WPI) as a result of his work-related left knee
19 injury, and further recommended closure of his claim. *See*, Exhibit No. 4 at pp. 94-97.

20
21 5. By written determination dated November 11, 2013, ASC, on behalf of the Douglas
22 County and the PACT, notified Felton that it had calculated his average monthly wage (AMW)
23 under his workers' compensation claim herein at issue (Claim No. C143-12-06693-01), and that
24 this calculation was based upon the statutory deemed wage of a search and rescue volunteer. *See*,
25 Exhibit No. 3 at p. 1; Exhibit No. 4 at pp. 98-99.

26
27 6. Felton disagreed with ASC's November 11, 2013, determination and, therefore, he timely
28 initiated an appeal from that determination to a hearing officer and Hearing No. 47153-KD was

1 assigned to his appeal. *See*, Exhibit No. 3 at pp. 2-3.

2 7. By written determination dated November 13, 2013, ASC, on behalf of the Douglas
3 County and PACT, notified Felton of the result of his PPD evaluation, advising Felton that Dr.
4 Jay Betz had determined he had suffered a one percent (1%) whole person impairment (WPI) or
5 permanent partial disability (PPD) as a result of his work-related left knee injury. *See*, Exhibit
6 No. 3 at pp. 4; Exhibit No. 4 at pp. 100-03. In turn, by means of this determination, ASC
7 awarded Felton a 1% PPD. *Id.*

8
9 8. Felton disagreed with ASC's November 13, 2013, determination and, therefore, he timely
10 initiated an appeal from that determination to a hearing officer and Hearing No. 47154-KD was
11 assigned to his appeal. *See*, Exhibit No. 3 at pp. 5-6.

12
13 9. Following a hearing and by written decision dated February 20, 2014, made under
14 Hearing Nos. 47153-KD & 47154-KD, Hearing Officer Katherine Diamond affirmed both the
15 November 11, 2013 and November 13, 2013, written determinations made by ASC. *See*,
16 Exhibit No. 3 at pp. 7-9.

17
18 10. Felton disagreed with the Hearing Officer's decision made under Hearing Nos. 47153-KD
19 & 47154-KD and, therefore, he timely appealed from that decision to an Appeals Officer and
20 Appeal No. 47863-WDD was assigned to his appeal. *See*, Exhibit No. 3 at pp. 10-12. At the
21 time of the trial of this contested case (Appeal No. 47863-WDD), Felton informed the Appeals
22 Officer, Douglas County and the PACT that he no longer disagreed with the November 13, 2013,
23 determination made by ASC that awarded him a 1% PPD for his work-related left knee injury,
24 nor did he disagree with the decision made by the Hearing Officer under Hearing No. 47154-KD
25 that affirmed the legal propriety of the November 13, 2013, determination. Hence, the decision
26 in this contested case (Appeal No. 47863-WDD) will solely resolve the issue whether AMW
27
28

1 determination made by ASC in its November 11, 2013, determination was proper under the law.

2 11. At the trial of this contested case (Appeal No. 47863-WDD), Felton presented
3 documentary evidence of what his earned wages were with Hewlett Packard at or about the time
4 that his March 2012 left knee injury was incurred. *See*, Exhibit No. 2.

6 CONCLUSIONS OF LAW

7 **A. Governing Law or Legal Principles**

8 The burden of proving a case beyond speculation and conjecture is on the Claimant. This
9 means that the Claimant must establish the work-connection of his/her injuries, the causal
10 relationship between his/her work-connected injury and his disabilities, the extent of his/her
11 disabilities, and all other facets of his/her claim by a preponderance of the evidence; he/she
12 cannot prevail if the evidence is merely evenly balanced. See, 8A Larson, Larson's Workers'
13 Compensation Laws, § 130.06(3)(a)(2006); see also, NRS 616C.150; NRS 616A.010; NRS
14 617.358.

16 Generally, the average monthly wage for an injured employee covered under the Nevada
17 Industrial Insurance Act is defined by NRS 616A.065, which provides in part:

19 1. Except as otherwise provided in subsection 3, "average monthly wage"
20 means the lesser of:

21 (a) The monthly wage actually received or deemed to have been received by the
22 employee on the date of the accident or injury to the employee, excluding
remuneration from employment:

23 (1) Not subject to the Nevada Industrial Insurance Act or the Nevada
24 Occupational Diseases Act; and

25 (2) For which coverage is elective, but has not been elected; or

26 (b) One hundred fifty percent of the state average weekly wage as most recently
27 computed by the Employment Security Division of the Department of
28 Employment, Training and Rehabilitation during the fiscal year preceding the
date of the injury or accident, multiplied by 4.33.

1 NRS 616A.065(1). (Emphasis added).

2 Except as otherwise provided by a specific statute, the amount of compensation and
3 benefits and the person or persons entitled thereto must be determined as of the date of the
4 accident or injury to the employee and their rights thereto become fixed as of that date. *See*, NRS
5 616C.425; *see also*, NAC 616C.441.

7 Concerning the average monthly wage (AMW) of volunteer members of the search and
8 rescue organization, the Nevada Legislature has specifically defined an "Employee" in pertinent
9 part as follows:

10 Volunteer members of a search and rescue organization that is under the direct
11 supervision of a county sheriff, while acting under the direction of the sheriff or a
12 designee of the sheriff:

- 13 1. In the conduct of any search and rescue operation; or
- 14 2. In training for such an operation, shall be deemed, for the purposes of chapters
15 616A to 616D, inclusive, of NRS, to be employees of the county at the wage of
16 \$2,000 per month, and are entitled to the benefits of those chapters.

17 *See*, NRS 616A.157 (Emphasis added).

18 The Nevada Legislature has delegated by statute to the Administrator of the Division of
19 Industrial Relations (DIR) the authority to promulgate the method of determining the average
20 monthly wage. *See*, NRS 616C.420; NRS 616A.400; and NAC 616A.420-447. Regulations
21 define average monthly wage to mean "the total gross value of all money, goods and services
22 received by an injured employee from his employment to compensate for his time or services and
23 is used as the base for calculating the rate of compensation for the injured employee." NAC
24 616C.420. In this regard, those wages which are deemed to be established in chapters 616A to
25 616D, inclusive, of NRS for certain groups of employees will be considered the average monthly
26 wage when applicable. *See*, NAC 616C.429.

1 The Division of Industrial Relations has also by regulation specifically allowed for the
2 adding or combining of wages in determining an employee's average monthly wage in certain
3 circumstances. *See*, NAC 616C.447. This latter cited regulation (NAC 616C.447) provides that
4 "the average monthly wage of an employee who is employed by two or more employers covered
5 by a private carrier or by a plan of self-insurance on the date of a disabling accident or disease is
6 equal to the sum of the wages earned or deemed to have been earned at each place of
7 employment." (Emphasis added).

9 **B. Felton Is Not Legally Entitled to an Average Monthly Wage (AMW) That Is**
10 **Based upon Both His Earned Wages at Hewlett Packard and the Statutory**
11 **Deemed Wage of a Search & Rescue Volunteer**

12 In March 2012 , when the left knee injury at issue in this contested case was incurred, Felton
13 was a mere volunteer, there was no statute providing that such volunteers were "employees" who
14 had a "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
15 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA).¹ Indeed, NRS 616A.157
16 was enacted and became law on May 21, 2013, which is one year and two months after the
17 incurrence of Felton's injury as a search and rescue volunteer with Douglas County. *See*, Assembly
18 Bill 206, Chapter 26, Section 1 (2013). Further, there is no indication that the Nevada Legislature
19 intended this statute to be applied retroactively. Indeed, the enactment of this statute in year 2013
20 indicates that at the time Felton's March 2012 left knee injury was incurred, "search and rescue
21 volunteers" were not employees with a deemed wage under any other category of volunteers with
22 a deemed wage, e.g. volunteer firefighters. Hence, at the time of Felton's injury in March 2012, he
23
24
25
26

27 ¹ "[A] person providing purely gratuitous voluntary service is not an 'employee' and has not entered into an
28 employment relationship with the person receiving the services for purposes of workers' compensation acts." 82 Am.
Jur. 2d Workers' Compensation § 127 (2012).

1 had no deemed wage as a volunteer to consider aggregating with wages from concurrent
2 employment.²

3 There are several additional legal reasons that support the conclusion reached in this
4 contested case.

5
6 First, while Nevada law is silent on whether it would allow the aggregation of wages from
7 two dissimilar employments, it may very well adopt the related-employment rule accepted by a
8 majority of jurisdictions throughout the country. *See generally*, A. Larson, *Larson's Workers'*
9 *Compensation Law* § 93.03[1][a] (2011).³ In this regard, in *Ayala v. Caesars Palace*, 119 Nev. 232,
10 71 P.3d 490 (2003), the Nevada Supreme Court has indicated its leaning toward the adoption of the
11 majority position on the issue of aggregation of concurrent employment, that is the related-
12 employment rule. In *Ayala*, the Court, in finding that the aggregation of concurrent wages was
13 inappropriate, specifically noted that the two types of employment in consideration (cashier and
14 banquet waitress) were not similar in nature.⁴ *See also*, 100 C.J.S. *Workers' Compensation* § 524
15 ("[w]orkers' compensation benefits are not allowed to compensate a volunteer for an inability to
16 pursue unrelated concurrent employment for another employer.")(citing, *Wislocki v. Town of*
17 *Prospect*, 224 Conn. 479, 619 A.2d 842 (1993)); *see also*, *Snyder v. Workmen's Compensation*
18
19
20
21

22 ² Notwithstanding the foregoing, after the enactment of NRS 616C.157, and by written determination
23 determination dated November 11, 2013, Felton was notified that by the claims administrator that an average monthly
24 wage (AMW) under his workers' compensation claim had been calculated, and was based upon the statutory deemed
25 wage of a search and rescue volunteer. Neither Douglas County nor the PACT appealed this determination and,
26 therefore, effective the date of the determination, the statutory deemed wage under NRS 616C.157 is Felton's AMW
27 under the claim. *See generally*, *Browning v. Young Electric Sign Co.*, 113 Nev. 420, 936 P.2d 322 (1997).

28 ³ *See e.g.*, *Hart's Exxon Service Station v. Prater*, 268 Ark.961, 597 S.W.2d 130 (1980); *Thompson v. STS*
Holdings, 711 S.E.2d 827 (N.C. Ct. App. 2011); *In the Matter of Russell*, 37 E.C.A.B. 567 (1986).

⁴ "[T]he record reflects that Ayala had left her position at the Mirage before the injury, so her employment [at
the Mirage] was not a concurrent employment under NAC 616C.447. Furthermore, she worked there as a cashier, not
as a banquet waitress. Therefore, CDS properly excluded those wages from its calculation." *See*, 119 Nev. at 240.

1 *Appeal Board*, 654 A.2d 641 (Pa. Commonw. Ct. 1995) and *New Bethlehem Volunteer Fire Comp.*
2 *v. Workmen's Compensation Appeal Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995).

3 Second, where a statute (or regulation) is unambiguous the plain language will control. The
4 plain language of NRS 616A.065 and NAC 616C.447 do not mandate the aggregation of earned
5 wages *and* those deemed to have been earned, as they are two different categories of wages.

6 Third, case law in other jurisdictions, barring the aggregation of deemed and earned wages
7 specifically for volunteer firefighters, relies on similar statutory language as found in Nevada. Those
8 courts have held that where two statutes seemingly conflict (one allowing for combined wages and
9 the other setting a deemed wage specifically for firefighters) the more specific statute (setting a
10 deemed wage) would, using the rules of statutory construction, control or be seen as an exception
11 to the general rule. *See, New Bethlehem Volunteer Fire Comp. v. Workmen's Compensation Appeal*
12 *Board*, 654 A.2d 267 (Pa. Commonw. Ct. 1995); *Snyder v. Workmen's Compensation Appeal Board*,
13 *654 A.2d 641* (Pa. Commonw. Ct. 1995); *Borough of Hensdale v. Workmen's Compensation Appeal*
14 *Bd.*, 659 A.2d 70 (Pa. Commonw. Ct. 1995); *Going v. Cromwell Fire District*, 159 Conn. 53, 267
15 A.2d 428 (1970); *Wislocki v. Town of Prospect*, 224 Conn. 479, 619 A.2d 842 (1993); *see also*,
16 *Laird v. State of Nevada Public Employees Retirement Board*, 98 Nev. 42, 639 P.2d 1171 (1982);
17 73 Am. Jur. 2d Statutes § 170 (Explaining that "[w]ith respect to a conflict arising between a statute
18 dealing generally with a subject and another dealing specifically with a certain phase of it, the
19 specific legislation controls in a proper case"); *see also*, NAC 616C.429;

20 Fourth, the Nevada analysis involves a statute and an administrative regulation. Courts,
21 scholarly publications, and recently the Nevada Supreme Court have held that where an
22 administrative regulation conflicts, expands or modifies a governing statute it will be deemed
23 invalid. *Meridian Gold Co. v. State ex rel. Department of Taxation*, 119 Nev. 630, 81 P.3d 516
24
25
26
27
28

1 (2003); *Public Agency Comp. Trust v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694 (2011); see
2 generally, 73 C.J.S. Public Administrative Law and Procedure § 172. In this regard, and to the extent
3 that NAC 616C.447 were construed to mandate aggregation of deemed wages and earned wages
4 from concurrent employment, this regulation might be deemed to exceed, modify and conflict with
5 the Nevada statute that specifically defines average monthly wage (NRS 616A.065) and the statute
6 governing the stated average monthly wage of volunteer members of search and rescue organizations
7 (NRS 616A.157), which latter statute does not address, allow for, nor contemplate wages from
8 private/public concurrent employment.
9

10 Lastly, there was no evidence of any public policy that the Nevada Legislature intended
11 Nevada counties, municipalities, and towns, etcetera, to take on immeasurable and unforeseen
12 liabilities based on possible alternative employment by its volunteers.⁵
13

14 ORDER

15 To the extent that any of the foregoing findings of fact may be construed as conclusions
16 of law, or any of the foregoing conclusions of law may be construed as findings of fact, they are
17 hereby adopted as such.
18

19 In accordance with the foregoing, **IT IS HEREBY ORDERED:**

- 20 1. That the November 11, 2013, average monthly wage determination made by ASC, on
21 behalf of Douglas County and the PACT, is hereby affirmed.
22
23 2. That the written decision dated February 20, 2014, made under Hearing No. 47153-KD
24

25 ⁵ Illustratively, the propriety of the ruling in this contested can be seen in a converse example. One can only
26 imagine the reaction of a private employer thrown into such a situation as the claimant intends to place Douglas County
27 and the PACT. A private employer insures his employees for workers' compensation with the expectation of replacing
28 lost wages through insurance based on the wages paid by that employer to the employee. Upon injury and disability from
work, however, the claimant alleges that he happens to also be a volunteer member of a search and rescue organization
when not employed by the private employer. The claimant then alleges that his average monthly wage under the claim
should be supplemented by an amount that includes not only his earned wages but also the deemed wages of his
concurrent employment as a volunteer. It is beyond difficult to imagine legal allowance of such an aggregation.

1 and by Hearing Officer Katherine Diamond, and which affirmed ASC's November 11, 2013
2 average monthly wage determination is hereby affirmed.

3 Dated this 4th ^{February} of ~~January~~, 2015.
4

5 Lonnie Ward (for)
6 Whitney D. Derrah, Appeals Officer
7

8 **NOTICE:**

9 Pursuant to NRS 233B.130, if any party desires to appeal this final decision of the
10 Appeals Officer, a Petition for Judicial Review must be filed with the District Court within
11 thirty (30) days after service of this final decision.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION
Pursuant to NRS 239B.030(4)

The undersigned hereby affirms that the preceding document filed with the Appeals Officer
does not contain the social security number of any person.

DATED this 26 day of January, 2015.

By: 

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing Decision was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 450, Carson City, Nevada, 89701 to the following:

GREGORY FELTON
PO BOX 2130
STATELINE, NV 89449-2130

NAIW
1000 E WILLIAM #208
CARSON CITY NV 89701

DOUGLAS COUNTY
PO BOX 218
MINDEN, NV 89423

ROBERT F BALKENBUSH, ESQ.
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

ALTERNATIVE SERVICE CONCEPTS
639 ISBELL RD STE 390
RENO, NV 89509

Dated this 4 day of February, 2015.

Tasha Eaton
Tasha Eaton, Supervising Legal Secretary
Employee of the State of Nevada

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing NOTICE OF APPEAL addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

and that on this date, I prepared for hand delivery, via Reno Carson Messenger Service, a true and correct copy of the aforementioned document to the following party at the address below:

ROBERT F BALKENBUSH ESQ
THORNDAL ARMSTRONG ET AL
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

and that on this date, I prepared for hand-delivery a true copy of the attached document addressed to:

APPEALS OFFICE
DEPT OF ADMINISTRATION
1050 E WILLIAM ST STE 450
CARSON CITY NV 89701

DATED: May 23, 2016

SIGNED: Taney L. Shewood

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding:

NOTICE OF APPEAL

filed in Case Number: 15 OC 00048 1B

X Does not contain the Social Security Number of any person.

-OR-

 Contains the Social security Number of a person as required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or for an application for a Federal or State grant.



Signature

5/23/16

Date

EDWARD L. OUEILHE, ESQ., deputy
Nevada Attorney for Injured Workers

Attorney for Gregory Felton



ORIGINAL

REC'D & FILED

2016 MAY 23 PM 3:41

SUSAN MERRIWETHER
CLERK

BY  DEPUTY

Edward L. Oueilhe, Esq., deputy
Nevada Bar No. 8218
Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
Carson City, Nevada 89701
Attorney for Appellant Gregory Felton

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR

GREGORY FELTON,

Appellant,

vs.

CASE NO. 15 OC 00048 1B

DEPT. NO. I

DOUGLAS COUNTY; PUBLIC AGENCY
COMPENSATION TRUST; and APPEALS
OFFICE OF THE DEPARTMENT OF
ADMINISTRATION

Respondents.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal
statement:

GREGORY FELTON.

2. Identify the judge issuing the decision, judgment,
or order appealed from:

HON. JAMES T. RUSSELL, District Court Judge.

3. Identify all parties to the proceedings in the
district court:

GREGORY FELTON, DOUGLAS COUNTY, PUBLIC AGENCY

//

1 COMPENSATION TRUST, APPEALS OFFICE OF THE DEPARTMENT OF
2 ADMINISTRATION.

3 4. Identify all parties involved in this appeal:

4 GREGORY FELTON, DOUGLAS COUNTY, PUBLIC AGENCY
5 COMPENSATION TRUST, APPEALS OFFICE OF THE DEPARTMENT OF
6 ADMINISTRATION.

7 5. Set forth the name, law firm, address, and
8 telephone number of all counsel on appeal and identify the party
9 or parties whom they represent:

10 GREGORY FELTON (Appellant): EDWARD L. OUEILHE, Esq.,
11 deputy, Nevada Attorney for Injured Workers (NAIW), 1000 East
12 William Street, Suite 208, Carson City, Nevada 89701 (775) 687-
13 4076.

14 PUBLIC AGENCY COMPENSATION TRUST (Respondent): ROBERT
15 F. BALKENBUSH, ESQ. and JOHN D. HOOKS, ESQ., 6590 S. McCarran
16 Blvd., Suite B, Reno, Nevada 89509, (775) 786-2882.

17 DOUGLAS COUNTY (Respondent): ROBERT F. BALKENBUSH,
18 ESQ. and JOHN D. HOOKS, ESQ., 6590 S. McCarran Blvd., Suite B,
19 Reno, Nevada 89509, (775) 786-2882.

20 6. Indicate whether appellant was represented by
21 appointed or retained counsel in the district court:

22 NAIW was appointed to represent appellant.

23 7. Indicate whether appellant is represented by
24 appointed or retained counsel on appeal:

25 NAIW was appointed to represent appellant.

26 8. Indicate whether appellant was granted leave to
27 proceed in forma pauperis, and the date of entry of the district
28 court order granting such leave:

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701
2200 South Rancho Drive, Suite 230
Las Vegas, Nevada 89102 (702) 486-2830

1 Appellant did not proceed in forma pauperis. The
2 Nevada Attorney for Injured Workers is a state agency exempt from
3 fees, and therefore, did not file a cost bond and did not pay a
4 filing fee.

5 9. Indicate the date the proceedings commenced in the
6 district court:

7 Petition for Judicial Review was filed March 2, 2015.

8 DATED this 18th day of May, 2016.

9 NEVADA ATTORNEY FOR INJURED WORKERS

10 

11 Edward L. Oueilhe, Esq., deputy
12 Nevada Bar No. 8218
13 1000 East William Street, Suite 208
14 Carson City, Nevada 89701
15 Attorneys for Appellant
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing NOTICE OF APPEAL addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

and that on this date, I prepared for hand delivery, via Reno Carson Messenger Service, a true and correct copy of the aforementioned document to the following party at the address below:

ROBERT F BALKENBUSH ESQ
THORNDAL ARMSTRONG ET AL
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

and that on this date, I prepared for hand-delivery a true copy of the attached document addressed to:

APPEALS OFFICE
DEPT OF ADMINISTRATION
1050 E WILLIAM ST STE 450
CARSON CITY NV 89701

DATED: May 23, 2016

SIGNED: Taney L. Sheworth

Judge: RUSSELL, JUDGE JAMES
TODD

Case No. 15 OC 00048 1B

Ticket No.
CTN:

FELTON, GREGORY

By:

-vs-

APPEALS OFFICE

DRSPND

By:

Dob: Sex:
Lic: Sid:
DEPARTMENT OF DRSPND
ADMINISTRATION

By:

Dob: Sex:
Lic: Sid:
DOUGLAS COUNTY DRSPND

By:

Dob: Sex:
Lic: Sid:
PUBLIC AGENCY DRSPND
COMPENSATION TRUST

By:

Dob: Sex:
Lic: Sid:Plate#:
Make:
Year: Accident:
Type:
Venue:
Location:Bond: Set:
Type: Posted:

FELTON, GREGORY

PLNTPET

Charges:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	05/23/16	CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
2	05/23/16	NOTICE OF APPEAL	1BCCOOPER	0.00	0.00
3	04/26/16	NOTICE OF ENTRY OF ORDER	1BVANESSA	0.00	0.00
4	02/02/16	SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
5	02/02/16	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
6	02/02/16	ORDER DENYING PETITION FOR JUDICIAL REVIEW	1BCCOOPER	0.00	0.00
7	11/04/15	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00
8	10/08/15	PETITIONER'S REPLY BRIEF	1BVANESSA	0.00	0.00
9	09/10/15	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
10	09/10/15	ORDER RE EXTENSION OF TIME TO FILE REPLY BRIEF	1BJULIEH	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
11	09/08/15	STIPULATION RE EXTENSION OF TIME TO FILE REPLY BRIEF	1BVANESSA	0.00	0.00
12	08/07/15	ANSWERING BRIEF OF DOUGLAS COUNTY AND PUBLIC AGENCY COMPENSATION TRUST	1BCCOOPER	0.00	0.00
13	07/06/15	STIPULATION FOR EXTENSION OF TIME FOR RESPONDENTS TO FILE ANSWERING BRIEF	1BCCOOPER	0.00	0.00
14	06/02/15	PETITIONER'S OPENING BRIEF	1BVANESSA	0.00	0.00
15	06/01/15	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
16	06/01/15	ORDER RE EXTENSION OF TIME TO FILE OPENING BRIEF	1BCCOOPER	0.00	0.00
17	05/28/15	STIPULATION RE EXTENSION OF TIME TO FILE OPENING BRIEF	1BVANESSA	0.00	0.00
18	04/27/15	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCFRANZ	0.00	0.00
19	04/27/15	ORDER RE EXTENSION OF TIME TO FILE OPENING BRIEF	1BCFRANZ	0.00	0.00
20	04/23/15	STIPULATION RE EXTENSION OF TIME TO FILE OPENING BRIEF	1BCCOOPER	0.00	0.00
21	03/26/15	CERTIFICATION OF TRANSMITTAL	1BCCOOPER	0.00	0.00
22	03/26/15	PLAINTIFF'S/PETITIONER'S INITIAL APPEARANCE AFFIRMATION PURSUANT TO NRS 239.030	1BCCOOPER	0.00	0.00
23	03/26/15	RECORD ON APPEAL	1BCCOOPER	0.00	0.00
24	03/26/15	TRANSMITTAL OF RECORD ON APPEAL	1BCCOOPER	0.00	0.00
25	03/06/15	NOTICE OF AMENDED PETITION FOR JUDICIAL REVIEW	1BCCOOPER	0.00	0.00
26	03/05/15	AMENDED PETITION FOR JUDICIAL REVIEW	1BCCOOPER	0.00	0.00
27	03/05/15	NOTICE OF INTENT TO PARTICIPATE IN PETITION FOR JUDICIAL REVIEW	1BCCOOPER	0.00	0.00
28	03/03/15	NOTICE OF PETITION FOR JUDICIAL REVIEW	1BVANESSA	0.00	0.00
29	03/02/15	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCGRIBBLE	0.00	0.00
30	03/02/15	ORDER FOR BRIEFING SCHEDULE	1BCGRIBBLE	0.00	0.00
31	03/02/15	PETITION FOR JUDICIAL REVIEW	1BVANESSA	265.00	0.00
Total:				265.00	0.00
Totals By: COST				265.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

REC'D & FILED

2016 FEB -2 AM 8:57

SUSAN MERRIWETHER
CLERK

BY [Signature]
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

GREGORY FELTON,

Case No. 15-OC-00048-1B

Petitioner,

Dept. No. 1

vs.

DOUGLAS COUNTY, PUBLIC AGENCY
COMPENSATION TRUST,
ALTERNATIVE SERVICE CONCEPTS,
LLC, and the NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS OFFICER
WHITNEY DERRAH

ORDER DENYING
PETITION FOR JUDICIAL REVIEW

Respondents.

_____/

This matter comes before the Court pursuant to an amended Petition for Judicial Review filed on March 5, 2015, by Petitioner, Gregory Felton. The Petitioner's Opening Brief in this matter was filed on June 1, 2015, and on August 7, 2015, Respondents, Douglas County and the Public Agency Compensation Trust, filed their Answering Brief. On October 7, 2015, the Petitioner filed his Reply Brief and the matter was submitted to the Court for decision on November 3, 2015.

I.

PROCEDURAL HISTORY

On March 6, 2012, the Petitioner, Gregory Felton (Felton), injured his knee while volunteering on a Douglas County search-and-rescue team. Although Felton had volunteered on the search-and-rescue team since 2005, at the time of the injury (and at all times relevant

1 hereto) Felton was employed by Hewlett-Packard (HP) as a quality control specialist.

2 Following the March 6, 2012, knee injury, Felton filed a claim for industrial insurance
3 benefits with Douglas County and its workers' compensation insurance carrier, the Public
4 Agency Compensation Trust (PACT).¹ On behalf of Douglas County and PACT, and by written
5 determination dated November 11, 2013, the third party claims administrator (Alternative
6 Service Concepts, LLC (ASC), notified Felton that it had calculated his average monthly wage
7 (AMW) under his workers' compensation claim and further advised that its calculations were
8 based upon the statutory deemed wage of a search-and-rescue volunteer. By written
9 determination dated November 13, 2013, ASC, again on behalf of Douglas County and PACT,
10 awarded Felton a one percent (1%) permanent partial disability (PPD) or whole person
11 impairment (WPI), as a result of his March 6, 2012, knee injury.

12 Felton disagreed with both ASC's November 11, 2013 determination, as well as ASC's
13 November 13, 2013 determination. Accordingly, Felton appealed these determinations to a
14 Hearing Officer. By written decision dated February 20, 2014, the Hearing Officer affirmed both
15 determinations made by ASC and, thereafter, Felton appealed to the Appeals Officer. However,
16 Felton later conceded the validity or propriety of the November 13, 2013, determination made by
17 ASC, in which Felton was awarded a 1% PPD or WPI for his left knee injury. Accordingly, the
18 only remaining issue before the Appeals Officer was the Hearing Officer's decision affirming
19 ASC's November 11, 2013, determination that Felton's AMW must be calculated using only the
20 statutory deemed wage of a search-and-rescue volunteer, as opposed to an aggregation of
21 Felton's earned wage at HP and the statutory deemed wage.

22 On August 25, 2014, a trial was held before the Appeals Officer. Having considered the
23 evidence and written arguments submitted by the parties, the Appeals Officer ultimately
24 concluded in a written decision filed and served on February 4, 2015, that Felton was not, as a
25

26 ¹ The Public Agency Compensation Trust is a self-insured association of public employers for workers'
27 compensation claims and, at all times relevant hereto, was the workers' compensation insurance carrier for Douglas
28 County.

1 matter of law, entitled to an AMW based on an aggregation of both his earned wages at HP (his
2 private employer) and his statutory deemed wage as a search-and-rescue volunteer. Accordingly,
3 the Appeals Officer affirmed the Hearing Officer's decision in Hearing No. 47153-KD, as well as
4 ASC's November 11, 2013 determination which assessed the AMW as a deemed wage of
5 \$2,000.00 per month.

6 Felton disagreed with the findings and decision reached by the Appeals Officer and,
7 therefore, on March 5, 2015, Felton filed the present amended Petition for Judicial Review. The
8 Petitioner specifically argues that the Appeals Officer committed legal error by failing to
9 aggregate Felton's earned wage at HP and his deemed wage as a search-and-rescue volunteer. As
10 such, the Petitioner urges the Court to reverse the Appeals Officer's affirmation of ASC's
11 November 11, 2013 determination.

12 II.

13 DISCUSSION

14 A. STANDARD OF REVIEW.

15 A reviewing Court may remand or affirm the final decision or set it aside in whole or in
16 part only if substantial rights of the petitioner have been prejudiced because the final decision of
17 the agency is:

- 18 (a) In violation of constitutional or statutory provisions;
- 19 (b) In excess of the statutory authority of the agency;
- 20 (c) Made upon unlawful procedure;
- 21 (d) Affected by other error of law;
- 22 (e) Clearly erroneous in view of the reliable, probative, and
23 substantial evidence on the whole record; or
- 24 (f) Arbitrary or capricious or characterized by abuse of
discretion.

25 NRS 233B.135(3). Since the parameters of judicial review are established by statute, judicial
26 review of a final decision of an agency must be conducted by the Court without a jury and
27 confined to the record. *See*, NRS 233B.135(1); *see also*, *Employment Security Dept. v. Cline*,
28

1 109 Nev. 74, 847 P.2d 736, 739 (1993)(stating that in reviewing an administrative agency
2 decision appellate courts are limited to the agency record and to the determination of whether the
3 administrative body acted arbitrarily or capriciously.).

4 The burden of proof is on the party attacking the decision to show that the final decision
5 is invalid. *Id.* Generally, an agency's conclusions of law, which will necessarily be closely related
6 to the agency's view of the facts, are entitled to deference, and will not be disturbed if they are
7 supported by "substantial evidence." *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806
8 (1986); *see also State Indus. Ins. Sys. v. Romero*, 110 Nev. 739, 742, 877 P.2d 541 (1994)
9 (stating that review of an administrative decision is limited to a determination of whether that
10 decision is based on substantial evidence or contains errors of law). "Substantial evidence" is
11 defined as that which "a reasonable mind might accept as adequate to support a conclusion."
12 *Richardson v. Perales*, 402 U.S. 389, 401 (1971).² What is more, an agency's interpretation of its
13 own a regulation is clothed with great deference. *City of Reno v. Reno Police Protection Ass'n*,
14 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002) (Holding that "this court will not readily disturb
15 an administrative interpretation of statutory language").

16 **B. NRS 616A.130 IS THE CONTROLLING STATUTE WITH RESPECT TO FELTON'S MARCH**
17 **2012 INJURY AND HIS AVERAGE MONTHLY WAGE**

18 Under Nevada law, except as otherwise provided by a specific statute, the amount of
19 compensation and benefits, and the person or persons entitled thereto, must be determined **as of**
20 **the date of the accident or injury** to the employee and their rights thereto become fixed as of
21 that date. *See*, NRS 616C.425; *see also*, NAC 616C.441; NAC 616C.429. As noted above,
22 Felton's left knee injury occurred in March 2012. At the time of the injury at issue, there was no
23 specific statute providing that search-and-rescue volunteers were "employees" who had a
24 "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
25 Insurance Act (NIIA) or the Nevada Occupational Disease Act (NODA). The Petitioner cites
26 NRS 616A.157 on numerous occasions throughout his briefs; however, NRS 616A.157 was

27 ² *See also, State Emp. Security v. Hilton Hotels*, 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1
28 (1986)(Substantial evidence is "that quantity and quality of evidence which a reasonable [person] could accept as
adequate to support a conclusion").

1 enacted and became law on May 21, 2013, which is one year and two months *after* the
2 occurrence of Felton's accidental injury. *See* Assembly Bill 206, Chapter 26, Section 1 (2013).³
3 Accordingly, as a matter of law, the controlling statute with respect to Felton's March 2012 knee
4 injury is NRS 616A.130. *See* Hearings on Assembly Bill (AB) 206 - Committee on Labor and
5 Energy, 77th Leg. (Nev., March 13, and April 29, 2013). NRS 616A.130 specifically provides
6 that, for purposes of calculating workers' compensation benefits, persons engaged in volunteer
7 work for a local public organization may be deemed employees at a deemed wage of \$100 per
8 month.⁴ *Id.*; *see also* NAC 616C.129.

9 **1. According to the rules of statutory construction, NAC 616C.447 cannot be**
10 **read to permit the aggregation of earned and deemed wages for volunteers**
11 **such as Felton.**

12 Pursuant to the principles of statutory construction, which apply to administrative
13 regulations⁵, NRS 616A.130, which establishes a **specific** deemed wage for persons engaged in
14 volunteer work, would control over the **general** rule set forth in NAC 616C.447.

15 In *New Bethlehem Volunteer Fire Co. v. Workmen's Compensation Appeal Board*, 654
16 A.2d 267 (Pa. Commonw. Ct. 1995), the claimant suffered a disabling injury during the course of

17 ³ The Court notes that the Appeals Officer appears to have applied NRS 616A.157 retroactively to the matter
18 at bar. In part, the foregoing is evidenced by the Appeals Officer's affirmation of ASC's November 11, 2013
19 determination. Substantive statutes, such as NRS 616A.157, are presumed to operate *prospectively*, unless it is clear that
20 the drafters intended the statute to be applied retroactively. *Sandpointe Apts., LLC v. Eighth Judicial Dist. Court*, 129
21 Nev. ___, 313 P.3d 849, 853 (2013) (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 273, (1994)). There is simply
22 no indication that the Nevada Legislature intended NRS 616A.157 to be applied retroactively. As such, NRS 616A.130
23 applies to the matter at bar and the statutory deemed wage at the time of Felton's injury was \$100.00 per month.

24 On the matter of the issue of aggregation of wages from concurrent employment, Nowhere in the legislative
25 history of NRS 616A.157 and considerations of its fiscal impact does the Legislature even remotely contemplate that
26 concurrent employment (which most volunteers likely have) would effect the bottom line to be absorbed by the self-
27 insured counties and municipalities. Indeed, every indication is to the contrary and the only contemplated change would
28 solely involve exposure from a \$100 deemed average monthly wage to a \$2000 deemed average monthly wage. The
foregoing is consistent with the arguments made by Douglas County and PACT and the Decision and Order of the
Appeals Officer in this matter.

25 ⁴ Notwithstanding, in this matter, ASC, as the third party administrator, improperly assessed Felton's deemed
26 average monthly wage (AMW) as being \$2000.00 per month, and neither Douglas County nor the PACT appealed from
27 this determination. Hence, as a matter of equitable estoppel and waiver, in this matter, Felton's deemed AMW is
28 \$2,000.00 per month. *See, Browning v. Young Electric Sign Co.*, 113 Nev. 420, 936 P.2d 322 (1997).

25 ⁵ Nevada has recognized that the rules of statutory construction apply to administrative regulations. *Meridian*
26 *Gold Co. v. State ex rel. Department of Taxation*, 119 Nev. 630, 81 P.3d 516 (2003).

1 his work as a volunteer firefighter and was concurrently employed at a local manufacturing
2 company. *New Bethlehem*, 654 A.2d at 267-68. Pennsylvania workers' compensation act (like
3 Nevada's) contained both a statute **specifically** characterizing volunteer firefighters as deemed
4 employees with deemed wages for purposes of benefits under the act ⁶ and Pennsylvania also had
5 a statute **generally** allowing the combination of wages from concurrent employment. ⁷ *Id.* at 642.
6 The court in *New Bethlehem* focused on the language of the two statutes and the rules of statutory
7 interpretation. The court noted that "where there are two statutory provisions in conflict with
8 each other, and this conflict is irreconcilable, the specific provision controls over the general
9 provisions." 1 Pa.C.S. § 1933 and *Paxon Maymar, Inc. v. Pennsylvania Liquor Control Bd.*, 11
10 Pa.Commonw. Ct. 136, 312 A.2d 115 (1973). The court explained that the statute relating to the
11 combination of concurrent wages was a **general** rule of aggregation and that the **specific** statute
12 allowing for a deemed wage for a volunteer firefighter was a specific and narrow "exception to
13 that rule, as a person who performs the task of volunteer fire fighting as well as working a
14 primary job is not in a concurrent employment situation." *New Bethlehem*, 654 A.2d at 268.

15 In *Snyder v. Workmen's Compensation Appeal Bd.* 654 A.2d 641 (Pa. Commonw. Ct.
16 1995), and *Borough of Hensdale v. Workmen's Compensation Appeal Bd.*, 659 A.2d 70 (Pa.
17 Commonw. Ct. 1995), the courts affirmed that volunteer firefighters were treated "differently
18 from other claimants who are permitted to add their concurrent wages for the purpose of
19 calculating their average weekly wage under Section 309(e) of the Act, 77 P.S. § 582(e), up to
20 the amount which would secure for them the greatest maximum benefit, that is, [granting]
21 benefits which equal the statewide average weekly wage." *Borough*, 659 A.2d at 76.

22 A similar logic and statutory interpretation was employed by the Supreme Court of
23 Connecticut in *Going v. Cromwell Fire District* 159 Conn. 53, 267 A.2d 428 (1970), and again in
24 *Wislocki v. Town of Prospect*, 224 Conn. 479, 619 A.2d 842 (1993). The Connecticut workers'

25 ⁶ The statute provides that when injured during the course of employment as a volunteer firefighter "there is
26 an irrebuttable presumption that his wages shall be at least equal to the Statewide average weekly wage for the purpose
27 of computing his compensation..." 77 P.S. § 1031(b).

28 ⁷ "Where the employee is working under concurrent contracts with two or more employers, his wages from all
such employers shall be considered as if earned from the employer liable for compensation." 77 P.S. § 582(e).

1 compensation act also contained both a statute **specifically** characterizing volunteer firefighters
2 as deemed employees with deemed wages for purposes of benefits under the act (C.G.S.A. § 7-
3 314(a))⁸ and a statute **generally** allowing the combination of wages from concurrent employment
4 (C.G.S.A. § 31-310).⁹ Notably, the court in *Going* stressed that:

5 “It is significant that section 31-310, as quoted above, provides in part that
6 the employee's ‘average weekly wages shall be calculated upon the basis of
7 wages earned from all such employers’ but that section 7-314a (b), in this
8 connection, provides a different method of computation, viz., ‘(f)or the
9 purpose of this section, the average weekly wage of a volunteer fireman shall
10 be construed to be the average production wage in the state as determined by
11 the labor commissioner under the provisions of section 31-309.’ ”

12 *Going*, 159 Conn. at 60. The court reasoned that it was plausible to suppose that the legislature
13 devised the latter method of computation to protect the volunteer firefighter in cases where
14 wages “actually” earned by them, if any, might be wholly inadequate as a basis for determining
15 their disability benefits. *Id.* The Connecticut Supreme Court summarized that “[w]here there are
16 two inconsistent methods of computation such as we have in the present case, the method of
17 computation which covers the subject matter in **specific** terms, herein as particularly applied to
18 volunteer firemen, will prevail over the **general** language of another statute which might
19 otherwise prove controlling.” *Going*, 159 Conn. at 60. (Emphasis added).

20 Accordingly, in light of the sound reasoning employed in the foregoing authority, this
21 Court finds that the **specific** language of NRS 616A.130, that the deemed wage of a volunteer is

22 ⁸ C.G.S.A. § 7-314(a)(b) provides that “[f]or the purpose of this section, the average weekly wage of a volunteer
23 fireman shall be construed to be the average production wage in the state as determined by the labor commissioner under
24 the provisions of section 31-309.”

25 ⁹ The Connecticut statute governing the combining of wages from concurrent employment allows aggregation
26 up to the legislative maximum average weekly wage in a pro rata calculation which may involve the Second Injury Fund
27 but otherwise simply allows for combining wages from concurrent employers. C.G.S.A. § 31-310, states in pertinent part:

28 Where the injured employee has worked for more than one employer as of the date of the injury
and the average weekly wage received from the employer in whose employ the injured employee was
injured, as determined under the provisions of this section, are insufficient to obtain the maximum
weekly compensation rate from the employer under section 31-309, prevailing as of the date of the
injury, the injured employee's average weekly wages shall be calculated upon the basis of wages earned
from all such employers in the period of concurrent employment not in excess of fifty-two weeks prior
to the date of the injury...The remaining portion of the applicable compensation rate shall be paid from
the Second Injury Fund upon submission to the Treasurer by the employer or the employer's insurer of
such vouchers and information as the Treasurer may require.

1 \$100.00 a month, would control over the **general** language of NAC 616C.447. Additionally,
2 regulations cannot be read to expand the scope of the statutes governing them and regulations
3 that cannot be read any other way are invalid.¹⁰

4 **C. APPLICABLE CASE LAW FROM NEVADA AND A MAJORITY OF OTHER JURISDICTIONS**
5 **SUPPORTS THE NON-AGGREGATION OF WAGES FROM DISSIMILAR, CONCURRENT**
6 **EMPLOYMENT.**

7 According to Larson's treatise on workers' compensation law, the rule adopted by a
8 majority of jurisdictions throughout the United States holds that the earnings of an injured
9 worker may be combined if, and only if, the various employments were "related" or "similar,"
10 otherwise these jurisdictions¹¹ bar aggregation of wages from dissimilar concurrent employment.
11 See A. Larson, *Larson's Workers' Compensation Law* § 93.03[1][a] (2011). This is commonly
12 referred to as the related-employment rule. *Id.*

13 While Nevada courts have not specifically addressed the related-employment rule, in

14 ¹⁰ In *Meridian Gold v. Nevada Dep't of Taxation*, 119 Nev. 630, 81 P.3d 5116 (2003), the Nevada Supreme
15 Court stressed that

16 "[w]hen determining the validity of an administrative regulation, courts generally give 'great
17 deference' to an agency's interpretation of a statute that the agency is charged with enforcing."
18 However, we "will not hesitate to declare a regulation invalid when the regulation violates the
19 constitution, conflicts with existing statutory provisions or exceeds the statutory authority of the
20 agency or is otherwise arbitrary and capricious."

21 *Meridian Gold*, 119 Nev. at 635; see also *Public Agency Comp. Trust v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694
22 (2011); see generally 73 C.J.S. Public Administrative Law and Procedure § 172.

23 ¹¹ In *Hart's Exxon Service Station v. Prater*, 268 Ark.961, 597 S.W.2d 130 (1980), the claimant sustained a
24 compensable injury while working at a service station while concurrently employed as a janitor with the school district.
25 In holding that the his compensation was properly based on service station wages rather than the combined incomes of
26 both employments, the Arkansas Court of Appeals noted that "the risk insured by a policy of workers' compensation
27 could not be determined with any degree of accuracy if compensation rates were computed on incomes outside the
28 covered employment" and that "[t]he premiums received by the insurance carrier to cover the risk must be determinable."
Hart's Exxon, 268 Ark. at 965. The court further explained that to remain solvent, the insurance carriers must receive
a premium "commensurate with the risk." *Id.* (emphasis in original).

In *Thompson v. STS Holdings*, 711 S.E. 2d 827 (N.C. Ct. App. 2011) in applying the related employment rule
even in the face of a vastly lower weekly wage for the employee, the court reasoned that "the General Assembly enacted
our workers' compensation act considering what it deemed "fair and just" to both parties." *Thompson*, 711 S.E.2d at 832.
The court noted that had the Legislature intended to authorize the Commission in the exceptional cases to "combine those
wages from any concurrent employment, we think it would have been equally specific." *Id.* (emphasis in original). See
also, *In the Matter of Russell*, 37 E.C.A.B. 567 (1986)(federal appeals board recognizing the majority rule holding that
in "[f]ollowing the precedents of the New York courts and of this Board, and the majority rule in other jurisdictions,
earnings from dissimilar private employment cannot be considered in computing appellant's pay rate for purposes of
compensation").

1 *Ayala v. Caesars Palace*, 119 Nev. 232, 71 P.3d 490 (2003), the Nevada Supreme Court
2 seemingly endorsed the sound reasoning behind this rule. In *Ayala*, the claimant fractured her
3 ankle while working as a banquet waitress for Caesars Palace, but provided wage information to
4 Caesar's third party administrator (TPA) that included her income as a cashier for the Mirage.
5 *Ayala*, 119 Nev. at 234. Upon further investigation, the TPA issued a determination reducing the
6 claimant's AMW and excluding the wages she earned as a cashier. Ultimately, the Nevada
7 Supreme Court concluded that the wage adjustment was warranted and the Nevada Supreme
8 Court noted that "the record reflects that Ayala had left her position at the Mirage before the
9 injury, so her employment [at the Mirage] was not a concurrent employment under NAC
10 616C.447. Furthermore, **she worked there as a cashier, not as a banquet waitress**. Therefore,
11 CDS properly excluded those wages from its calculation." *Id.* at 240. (Emphasis added).

12 Accordingly, based on the Nevada Supreme Court's analysis in *Ayala*, it appears that
13 Nevada is inclined to follow the majority of jurisdictions in utilizing the so-called related-
14 employment rule. As applied to the matter at bar, the related-employment rule would not support
15 the aggregation of Felton's earned wages as a quality control specialist at HP and his deemed
16 wages as a search-and-rescue volunteer with Douglas County, as Felton's employment at HP is
17 completely dissimilar to his activities as a search-and-rescue volunteer.

18 **1. Nevada Law Does Not Support the Aggregation of Earned Wages and**
19 **Deemed Wages for Volunteers Such as Felton.**

20 Generally, the average monthly wage for an injured employee covered under the Nevada
21 Industrial Insurance Act is governed by NRS 616A.065, which provides as follows:

22 "Except as otherwise provided in subsection 3, 'average monthly wage' means
23 **the lesser of:**

- 24 (a) **The monthly wage actually received or deemed to have been received** by
25 the employee on the date of the accident or injury to the employee,
26 excluding remuneration from employment:
27 (1) Not subject to the Nevada Industrial Insurance Act or the Nevada
28 Occupational Diseases Act; and
(2) For which coverage is elective, but has not been elected; or
(b) One hundred fifty percent of the state average weekly wage as most recently
computed by the Employment Security Division of the Department of
Employment, Training and Rehabilitation during the fiscal year preceding
the date of the injury or accident, multiplied by 4.33."

1 NRS 616A.065(1). (Emphasis added).

2 The Nevada legislature has delegated by statute to the Administrator of the Division of
3 Industrial Relations the authority to promulgate the method of determining the average monthly
4 wage. *See* NRS 616C.420; *see also* NRS 6161A.400; and NAC 616A.420-447. Accordingly, the
5 Division of Industrial Relations has issued NAC 616C.447, which provides as follows:

6 The average monthly wage of an employee who is employed by two or more
7 employers covered by a private carrier or by a plan of self-insurance on the
8 date of a disabling accident or disease **is equal to the sum of the wages
9 earned or deemed to have been earned at each place of employment.** The
insurer shall advise an injured employee in writing of his or her entitlement
to compensation for concurrent employment at the time of the initial payment
of the compensation.

10 (Emphasis added).

11 The Court finds that the plain language of the above-cited statute and regulation appears
12 to bar the aggregation of both earned and deemed wages when calculating the average monthly
13 wage (AMW). The relevant statute and regulation (NRS 616A.065 and NAC 616C.447)
14 specifically utilize the disjunctive "or" with respect to the statutory components of the AMW -
15 not the conjunctive "and," and not "and/or." The plain meaning of the cited statute and
16 regulation allow for the AMW to be calculated by "the sum of the wages earned" **or** "the sum of
17 the wages deemed to have been earned." The statute and regulation speaks for themselves and
18 certainly do not mandate or clearly permit that the AMW be calculated by considering "the sum
19 of wages earned" **and** "the sum of wages deemed to be earned," as suggested by the Petitioner.
20 Accordingly, based on the plain, unambiguous wording of the relevant statute and regulation, the
21 aggregation of earned and deemed wages appears to be barred when calculating the AMW for a
22 volunteer such as Felton.

23 **2. Sound public policy militates against exposing private or public employers to**
24 **unknown liability concerning a volunteer's concurrent employment.**

25 Lastly, there is no evidence of any public policy adopted by the legislature showing an
26 intention that Nevada counties, municipalities, and towns, etcetera, to take on immeasurable and
27 unforeseen liabilities based on possible alternative employment by its volunteers. Likewise, there
28 is no evidence of any public policy adopted by the legislature showing an intention to permit

1 through administrative regulations modification of the unambiguous statutory definition of the
2 AMW of volunteers. The language of NRS 616A.130 exists to provide coverage for volunteers at
3 a reasonable rate and has only been expanded by specific provisions adopted by the Nevada
4 Legislature, none of which applied to the Petitioner on March 6, 2012, the date of his accident.¹²
5 See NRS 616A.157 (date of enactment May 21, 2013).

6 In addition, volunteer organizations (such as Douglas County Search-and-Rescue)
7 generally have no knowledge of the concurrent salary or wages of its volunteers, and often no
8 knowledge of concurrent employment at all. Hence, in this Court's opinion it would be roundly
9 unfair to private or public employers to apply NAC 616C.447 to volunteers so as to permit
10 aggregation of wages from concurrent employment.

11 III.

12 CONCLUSION

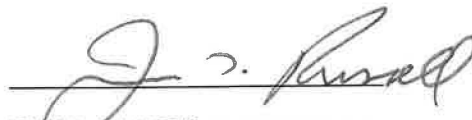
13 In accordance with the rules of statutory construction, applicable case law and
14 sound public policy, the Court affirms the Appeals Officer's February 4, 2015, decision and
15 order, with respect to the non-aggregation of wages from concurrent employment.

16 JUDGMENT

17 Therefore, good cause appearing,

18 IT IS HEREBY ORDERED that the Petition for Judicial Review is hereby DENIED.

19 Dated this 2nd day of February, 2016.

20
21 
22 HON. JAMES T. RUSSELL
23 DISTRICT COURT JUDGE
24
25

26 ¹² Volunteers are, frankly, fortunate to have coverage under the Nevada Industrial Insurance Act. Apart from
27 such coverage, it seems to this Court that a volunteer assumes the risk associated with the activity he/she volunteers to
28 perform.

1 **Proposed Order Submitted by:**
2 ROBERT F. BALKENBUSH, ESQ.
3 State Bar No. 1246
4 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
5 6590 S. McCarran, Suite B
6 Reno, Nevada 89509
7 Attorneys for Respondents,
8 Douglas County and
9 Public Agency Compensation Trust
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 2nd day of February, 2016, I deposited for mailing at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Edward L. Oueilhe, Esq.
1000 E. William Street, Suite 208
Carson City, NV 89701

Robert F. Balkenbush, Esq.
6900 S. McCarran, Suite B
Reno, NV 89509



Angela Jeffries
Judicial Assistant, Dept. 1



ORIGINAL

1 Edward L. Oueilhe, Esq., deputy
Nevada Bar No. 08218
2 Nevada Attorney for Injured Workers
1000 East William Street, Suite 208
3 Carson City, Nevada 89701
Attorney for Petitioner,
4 Gregory Felton

REC'D & FILED

2016 APR 26 PM 3:00

SUSAN MERRINETHIER
CLERK

BY 
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY

9 GREGORY FELTON,
10 Petitioner,

11 vs. CASE NO. 15 OC 00048 1B
12 DOUGLAS COUNTY; PUBLIC AGENCY DEPT. NO. 1
COMPENSATION TRUST; and APPEALS
13 OFFICE of the DEPARTMENT OF
ADMINISTRATION,

14 Respondents.
15 _____/

16 NOTICE OF ENTRY OF ORDER


17 TO: DOUGLAS COUNTY AND PUBLIC AGENCY COMPENSATION
TRUST; and

18
19 TO: ROBERT F. BALKENBUSH, Esq., its attorney.

20 PLEASE TAKE NOTICE that an Order was entered in the
21 above-entitled matter on the 2nd day of February, 2016. A copy
22 of said Order is attached hereto.

23 DATED this 25th day of April, 2016.

24 NEVADA ATTORNEY FOR INJURED WORKERS

25 
26 Edward L. Oueilhe, Esq., deputy
Nevada Bar No. 08218
27 1000 East William Street, Suite 208
Carson City, Nevada 89701
Attorney for Petitioner,
28 Gregory Felton

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

ATTACHMENT

ATTACHMENT

REC'D & FILED

2016 FEB -2 AM 8:57

SUSAN HERRIWETHER
CLERK

RY 
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

GREGORY FELTON,

Case No. 15-OC-00048-1B

Petitioner,

Dept. No. 1

vs.

DOUGLAS COUNTY, PUBLIC AGENCY
COMPENSATION TRUST,
ALTERNATIVE SERVICE CONCEPTS,
LLC, and the NEVADA DEPARTMENT OF
ADMINISTRATION APPEALS OFFICER
WHITNEY DERRAH

ORDER DENYING
PETITION FOR JUDICIAL REVIEW

Respondents.

_____ /

This matter comes before the Court pursuant to an amended Petition for Judicial Review filed on March 5, 2015, by Petitioner, Gregory Felton. The Petitioner's Opening Brief in this matter was filed on June 1, 2015, and on August 7, 2015, Respondents, Douglas County and the Public Agency Compensation Trust, filed their Answering Brief. On October 7, 2015, the Petitioner filed his Reply Brief and the matter was submitted to the Court for decision on November 3, 2015.

I.

PROCEDURAL HISTORY

On March 6, 2012, the Petitioner, Gregory Felton (Felton), injured his knee while volunteering on a Douglas County search-and-rescue team. Although Felton had volunteered on the search-and-rescue team since 2005, at the time of the injury (and at all times relevant

1 hereto) Felton was employed by Hewlett-Packard (HP) as a quality control specialist.

2 Following the March 6, 2012, knee injury, Felton filed a claim for industrial insurance
3 benefits with Douglas County and its workers' compensation insurance carrier, the Public
4 Agency Compensation Trust (PACT).¹ On behalf of Douglas County and PACT, and by written
5 determination dated November 11, 2013, the third party claims administrator (Alternative
6 Service Concepts, LLC (ASC), notified Felton that it had calculated his average monthly wage
7 (AMW) under his workers' compensation claim and further advised that its calculations were
8 based upon the statutory deemed wage of a search-and-rescue volunteer. By written
9 determination dated November 13, 2013, ASC, again on behalf of Douglas County and PACT,
10 awarded Felton a one percent (1%) permanent partial disability (PPD) or whole person
11 impairment (WPI), as a result of his March 6, 2012, knee injury.

12 Felton disagreed with both ASC's November 11, 2013 determination, as well as ASC's
13 November 13, 2013 determination. Accordingly, Felton appealed these determinations to a
14 Hearing Officer. By written decision dated February 20, 2014, the Hearing Officer affirmed both
15 determinations made by ASC and, thereafter, Felton appealed to the Appeals Officer. However,
16 Felton later conceded the validity or propriety of the November 13, 2013, determination made by
17 ASC, in which Felton was awarded a 1% PPD or WPI for his left knee injury. Accordingly, the
18 only remaining issue before the Appeals Officer was the Hearing Officer's decision affirming
19 ASC's November 11, 2013, determination that Felton's AMW must be calculated using only the
20 statutory deemed wage of a search-and-rescue volunteer, as opposed to an aggregation of
21 Felton's earned wage at HP and the statutory deemed wage.

22 On August 25, 2014, a trial was held before the Appeals Officer. Having considered the
23 evidence and written arguments submitted by the parties, the Appeals Officer ultimately
24 concluded in a written decision filed and served on February 4, 2015, that Felton was not, as a
25

26 ¹ The Public Agency Compensation Trust is a self-insured association of public employers for workers'
27 compensation claims and, at all times relevant hereto, was the workers' compensation insurance carrier for Douglas
28 County.

1 matter of law, entitled to an AMW based on an aggregation of both his earned wages at HP (his
2 private employer) and his statutory deemed wage as a search-and-rescue volunteer. Accordingly,
3 the Appeals Officer affirmed the Hearing Officer's decision in Hearing No. 47153-KD, as well as
4 ASC's November 11, 2013 determination which assessed the AMW as a deemed wage of
5 \$2,000.00 per month.

6 Felton disagreed with the findings and decision reached by the Appeals Officer and,
7 therefore, on March 5, 2015, Felton filed the present amended Petition for Judicial Review. The
8 Petitioner specifically argues that the Appeals Officer committed legal error by failing to
9 aggregate Felton's earned wage at HP and his deemed wage as a search-and-rescue volunteer. As
10 such, the Petitioner urges the Court to reverse the Appeals Officer's affirmation of ASC's
11 November 11, 2013 determination.

12 II.

13 DISCUSSION

14 A. STANDARD OF REVIEW.

15 A reviewing Court may remand or affirm the final decision or set it aside in whole or in
16 part only if substantial rights of the petitioner have been prejudiced because the final decision of
17 the agency is:

- 18 (a) In violation of constitutional or statutory provisions;
- 19 (b) In excess of the statutory authority of the agency;
- 20 (c) Made upon unlawful procedure;
- 21 (d) Affected by other error of law;
- 22 (e) Clearly erroneous in view of the reliable, probative, and
23 substantial evidence on the whole record; or
- 24 (f) Arbitrary or capricious or characterized by abuse of
discretion.

25 NRS 233B.135(3). Since the parameters of judicial review are established by statute, judicial
26 review of a final decision of an agency must be conducted by the Court without a jury and
27 confined to the record. *See*, NRS 233B.135(1); *see also*, *Employment Security Dept. v. Cline*,
28

1 109 Nev. 74, 847 P.2d 736, 739 (1993)(stating that in reviewing an administrative agency
2 decision appellate courts are limited to the agency record and to the determination of whether the
3 administrative body acted arbitrarily or capriciously.).

4 The burden of proof is on the party attacking the decision to show that the final decision
5 is invalid. *Id.* Generally, an agency's conclusions of law, which will necessarily be closely related
6 to the agency's view of the facts, are entitled to deference, and will not be disturbed if they are
7 supported by "substantial evidence." *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806
8 (1986); *see also State Indus. Ins. Sys. v. Romero*, 110 Nev. 739, 742, 877 P.2d 541 (1994)
9 (stating that review of an administrative decision is limited to a determination of whether that
10 decision is based on substantial evidence or contains errors of law). "Substantial evidence" is
11 defined as that which "a reasonable mind might accept as adequate to support a conclusion."
12 *Richardson v. Perales*, 402 U.S. 389, 401 (1971).² What is more, an agency's interpretation of its
13 own a regulation is clothed with great deference. *City of Reno v. Reno Police Protection Ass'n*,
14 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002) (Holding that "this court will not readily disturb
15 an administrative interpretation of statutory language").

16 **B. NRS 616A.130 IS THE CONTROLLING STATUTE WITH RESPECT TO FELTON'S MARCH**
17 **2012 INJURY AND HIS AVERAGE MONTHLY WAGE**

18 Under Nevada law, except as otherwise provided by a specific statute, the amount of
19 compensation and benefits, and the person or persons entitled thereto, must be determined as of
20 the date of the accident or injury to the employee and their rights thereto become fixed as of
21 that date. *See*, NRS 616C.425; *see also*, NAC 616C.441; NAC 616C.429. As noted above,
22 Felton's left knee injury occurred in March 2012. At the time of the injury at issue, there was no
23 specific statute providing that search-and-rescue volunteers were "employees" who had a
24 "deemed wage" for the purpose of insurance coverage and benefits under the Nevada Industrial
25 Insurance Act (NILA) or the Nevada Occupational Disease Act (NODA). The Petitioner cites
26 NRS 616A.157 on numerous occasions throughout his briefs; however, NRS 616A.157 was

27 ² *See also, State Emp. Security v. Hilton Hotels*, 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1
28 (1986)(Substantial evidence is "that quantity and quality of evidence which a reasonable [person] could accept as
adequate to support a conclusion").

1 enacted and became law on May 21, 2013, which is one year and two months *after* the
2 occurrence of Felton's accidental injury. *See* Assembly Bill 206, Chapter 26, Section 1 (2013).³
3 Accordingly, as a matter of law, the controlling statute with respect to Felton's March 2012 knee
4 injury is NRS 616A.130. *See* Hearings on Assembly Bill (AB) 206 - Committee on Labor and
5 Energy, 77th Leg. (Nev., March 13, and April 29, 2013). NRS 616A.130 specifically provides
6 that, for purposes of calculating workers' compensation benefits, persons engaged in volunteer
7 work for a local public organization may be deemed employees at a deemed wage of \$100 per
8 month.⁴ *Id.*; *see also* NAC 616C.129.

9 **1. According to the rules of statutory construction, NAC 616C.447 cannot be**
10 **read to permit the aggregation of earned and deemed wages for volunteers**
11 **such as Felton.**

12 Pursuant to the principles of statutory construction, which apply to administrative
13 regulations⁵, NRS 616A.130, which establishes a specific deemed wage for persons engaged in
14 volunteer work, would control over the general rule set forth in NAC 616C.447.

15 In *New Bethlehem Volunteer Fire Co. v. Workmen's Compensation Appeal Board*, 654
16 A.2d 267 (Pa. Commonw. Ct. 1995), the claimant suffered a disabling injury during the course of

17 ³ The Court notes that the Appeals Officer appears to have applied NRS 616A.157 retroactively to the matter
18 at bar. In part, the foregoing is evidenced by the Appeals Officer's affirmation of ASC's November 11, 2013
19 determination. Substantive statutes, such as NRS 616A.157, are presumed to operate *prospectively*, unless it is clear that
20 the drafters intended the statute to be applied retroactively. *Sandpointe Apts., LLC v. Eighth Judicial Dist. Court*, 129
21 Nev. ___, 313 P.3d 849, 853 (2013) (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 273, (1994)). There is simply
22 no indication that the Nevada Legislature intended NRS 616A.157 to be applied retroactively. As such, NRS 616A.130
23 applies to the matter at bar and the statutory deemed wage at the time of Felton's injury was \$100.00 per month.

24 On the matter of the issue of aggregation of wages from concurrent employment, Nowhere in the legislative
25 history of NRS 616A.157 and considerations of its fiscal impact does the Legislature even remotely contemplate that
26 concurrent employment (which most volunteers likely have) would effect the bottom line to be absorbed by the self-
27 insured counties and municipalities. Indeed, every indication is to the contrary and the only contemplated change would
28 solely involve exposure from a \$100 deemed average monthly wage to a \$2000 deemed average monthly wage. The
foregoing is consistent with the arguments made by Douglas County and PACT and the Decision and Order of the
Appeals Officer in this matter.

29 ⁴ Notwithstanding, in this matter, ASC, as the third party administrator, improperly assessed Felton's deemed
30 average monthly wage (AMW) as being \$2000.00 per month, and neither Douglas County nor the PACT appealed from
31 this determination. Hence, as a matter of equitable estoppel and waiver, in this matter, Felton's deemed AMW is
32 \$2,000.00 per month. *See, Browning v. Young Electric Sign Co.*, 113 Nev. 420, 936 P.2d 322 (1997).

33 ⁵ Nevada has recognized that the rules of statutory construction apply to administrative regulations. *Meridian*
34 *Gold Co. v. State ex rel. Department of Taxation*, 119 Nev. 630, 81 P.3d 516 (2003).

1 his work as a volunteer firefighter and was concurrently employed at a local manufacturing
2 company. *New Bethlehem*, 654 A.2d at 267-68. Pennsylvania workers' compensation act (like
3 Nevada's) contained both a statute specifically characterizing volunteer firefighters as deemed
4 employees with deemed wages for purposes of benefits under the act ⁶ and Pennsylvania also had
5 a statute generally allowing the combination of wages from concurrent employment. ⁷ *Id.* at 642.
6 The court in *New Bethlehem* focused on the language of the two statutes and the rules of statutory
7 interpretation. The court noted that "where there are two statutory provisions in conflict with
8 each other, and this conflict is irreconcilable, the specific provision controls over the general
9 provisions." 1 Pa.C.S. § 1933 and *Paxon Maymar, Inc. v. Pennsylvania Liquor Control Bd.*, 11
10 Pa.Commonw. Ct. 136, 312 A.2d 115 (1973). The court explained that the statute relating to the
11 combination of concurrent wages was a general rule of aggregation and that the specific statute
12 allowing for a deemed wage for a volunteer firefighter was a specific and narrow "exception to
13 that rule, as a person who performs the task of volunteer fire fighting as well as working a
14 primary job is not in a concurrent employment situation." *New Bethlehem*, 654 A.2d at 268.

15 In *Snyder v. Workmen's Compensation Appeal Bd.* 654 A.2d 641 (Pa. Commonw. Ct.
16 1995), and *Borough of Hensdale v. Workmen's Compensation Appeal Bd.*, 659 A.2d 70 (Pa.
17 Commonw. Ct. 1995), the courts affirmed that volunteer firefighters were treated "differently
18 from other claimants who are permitted to add their concurrent wages for the purpose of
19 calculating their average weekly wage under Section 309(e) of the Act, 77 P.S. § 582(e), up to
20 the amount which would secure for them the greatest maximum benefit, that is, [granting]
21 benefits which equal the statewide average weekly wage." *Borough*, 659 A.2d at 76.

22 A similar logic and statutory interpretation was employed by the Supreme Court of
23 Connecticut in *Going v. Cromwell Fire District* 159 Conn. 53, 267 A.2d 428 (1970), and again in
24 *Wislocki v. Town of Prospect*, 224 Conn. 479, 619 A.2d 842 (1993). The Connecticut workers'

25
26 ⁶ The statute provides that when injured during the course of employment as a volunteer firefighter "there is
27 an irrebuttable presumption that his wages shall be at least equal to the Statewide average weekly wage for the purpose
28 of computing his compensation..." 77 P.S. § 1031(b).

⁷ "Where the employee is working under concurrent contracts with two or more employers, his wages from all
such employers shall be considered as if earned from the employer liable for compensation." 77 P.S. § 582(e).

1 compensation act also contained both a statute specifically characterizing volunteer firefighters
2 as deemed employees with deemed wages for purposes of benefits under the act (C.G.S.A. § 7-
3 314(a))⁸ and a statute generally allowing the combination of wages from concurrent employment
4 (C.G.S.A. § 31-310).⁹ Notably, the court in *Going* stressed that:

5 "It is significant that section 31-310, as quoted above, provides in part that
6 the employee's 'average weekly wages shall be calculated upon the basis of
7 wages earned from all such employers' but that section 7-314a (b), in this
8 connection, provides a different method of computation, viz., '(f)or the
purpose of this section, the average weekly wage of a volunteer fireman shall
be construed to be the average production wage in the state as determined by
the labor commissioner under the provisions of section 31-309.' "

9 *Going*, 159 Conn. at 60. The court reasoned that it was plausible to suppose that the legislature
10 devised the latter method of computation to protect the volunteer firefighter in cases where
11 wages "actually" earned by them, if any, might be wholly inadequate as a basis for determining
12 their disability benefits. *Id.* The Connecticut Supreme Court summarized that "[w]here there are
13 two inconsistent methods of computation such as we have in the present case, the method of
14 computation which covers the subject matter in specific terms, herein as particularly applied to
15 volunteer firemen, will prevail over the general language of another statute which might
16 otherwise prove controlling." *Going*, 159 Conn. at 60. (Emphasis added).

17 Accordingly, in light of the sound reasoning employed in the foregoing authority, this
18 Court finds that the specific language of NRS 616A.130, that the deemed wage of a volunteer is

19
20 ⁸ C.G.S.A. § 7-314(a)(b) provides that "[f]or the purpose of this section, the average weekly wage of a volunteer
21 fireman shall be construed to be the average production wage in the state as determined by the labor commissioner under
the provisions of section 31-309."

22 ⁹ The Connecticut statute governing the combining of wages from concurrent employment allows aggregation
23 up to the legislative maximum average weekly wage in a pro rata calculation which may involve the Second Injury Fund
but otherwise simply allows for combining wages from concurrent employers. C.G.S.A. § 31-310, states in pertinent part:

24 Where the injured employee has worked for more than one employer as of the date of the injury
25 and the average weekly wage received from the employer in whose employ the injured employee was
26 injured, as determined under the provisions of this section, are insufficient to obtain the maximum
27 weekly compensation rate from the employer under section 31-309, prevailing as of the date of the
28 injury, the injured employee's average weekly wages shall be calculated upon the basis of wages earned
from all such employers in the period of concurrent employment not in excess of fifty-two weeks prior
to the date of the injury...The remaining portion of the applicable compensation rate shall be paid from
the Second Injury Fund upon submission to the Treasurer by the employer or the employer's insurer of
such vouchers and information as the Treasurer may require.

1 \$100.00 a month, would control over the general language of NAC 616C.447. Additionally,
2 regulations cannot be read to expand the scope of the statutes governing them and regulations
3 that cannot be read any other way are invalid.¹⁰

4 **C. APPLICABLE CASE LAW FROM NEVADA AND A MAJORITY OF OTHER JURISDICTIONS**
5 **SUPPORTS THE NON-AGGREGATION OF WAGES FROM DISSIMILAR, CONCURRENT**
6 **EMPLOYMENT.**

7 According to Larson's treatise on workers' compensation law, the rule adopted by a
8 majority of jurisdictions throughout the United States holds that the earnings of an injured
9 worker may be combined if, and only if, the various employments were "related" or "similar,"
10 otherwise these jurisdictions¹¹ bar aggregation of wages from dissimilar concurrent employment.
11 See A. Larson, *Larson's Workers' Compensation Law* § 93.03[1][a] (2011). This is commonly
12 referred to as the related-employment rule. *Id.*

13 While Nevada courts have not specifically addressed the related-employment rule, in

14 ¹⁰ In *Meridian Gold v. Nevada Dep't of Taxation*, 119 Nev. 630, 81 P.3d 5116 (2003), the Nevada Supreme
15 Court stressed that

16 "[w]hen determining the validity of an administrative regulation, courts generally give 'great
17 deference' to an agency's interpretation of a statute that the agency is charged with enforcing."
18 However, we "will not hesitate to declare a regulation invalid when the regulation violates the
constitution, conflicts with existing statutory provisions or exceeds the statutory authority of the
agency or is otherwise arbitrary and capricious."

19 *Meridian Gold*, 119 Nev. at 635; see also *Public Agency Comp. Trust v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694
(2011); see generally 73 C.J.S. Public Administrative Law and Procedure § 172.

20 ¹¹ In *Hart's Exxon Service Station v. Prater*, 268 Ark.961, 597 S.W.2d 130 (1980), the claimant sustained a
21 compensable injury while working at a service station while concurrently employed as a janitor with the school district.
22 In holding that the his compensation was properly based on service station wages rather than the combined incomes of
23 both employments, the Arkansas Court of Appeals noted that "the risk insured by a policy of workers' compensation
could not be determined with any degree of accuracy if compensation rates were computed on incomes outside the
covered employment" and that "[t]he premiums received by the insurance carrier to cover the risk must be determinable."
24 *Hart's Exxon*, 268 Ark. at 965. The court further explained that to remain solvent, the insurance carriers must receive
a premium "commensurate with the risk." *Id.* (emphasis in original).

25 In *Thompson v. STS Holdings*, 711 S.E. 2d 827 (N.C. Ct. App. 2011) in applying the related employment rule
26 even in the face of a vastly lower weekly wage for the employee, the court reasoned that "the General Assembly enacted
our workers' compensation act considering what it deemed "fair and just" to both parties." *Thompson*, 711 S.E.2d at 832.
27 The court noted that had the Legislature intended to authorize the Commission in the exceptional cases to "combine those
wages from any concurrent employment, we think it would have been equally specific." *Id.* (emphasis in original). See
28 also, *In the Matter of Russell*, 37 E.C.A.B. 567 (1986)(federal appeals board recognizing the majority rule holding that
in "[f]ollowing the precedents of the New York courts and of this Board, and the majority rule in other jurisdictions,
earnings from dissimilar private employment cannot be considered in computing appellant's pay rate for purposes of
compensation").

1 *Ayala v. Caesars Palace*, 119 Nev. 232, 71 P.3d 490 (2003), the Nevada Supreme Court
2 seemingly endorsed the sound reasoning behind this rule. In *Ayala*, the claimant fractured her
3 ankle while working as a banquet waitress for Caesars Palace, but provided wage information to
4 Caesar's third party administrator (TPA) that included her income as a cashier for the Mirage.
5 *Ayala*, 119 Nev. at 234. Upon further investigation, the TPA issued a determination reducing the
6 claimant's AMW and excluding the wages she earned as a cashier. Ultimately, the Nevada
7 Supreme Court concluded that the wage adjustment was warranted and the Nevada Supreme
8 Court noted that "the record reflects that Ayala had left her position at the Mirage before the
9 injury, so her employment [at the Mirage] was not a concurrent employment under NAC
10 616C.447. Furthermore, **she worked there as a cashier, not as a banquet waitress**. Therefore,
11 CDS properly excluded those wages from its calculation." *Id.* at 240. (Emphasis added).

12 Accordingly, based on the Nevada Supreme Court's analysis in *Ayala*, it appears that
13 Nevada is inclined to follow the majority of jurisdictions in utilizing the so-called related-
14 employment rule. As applied to the matter at bar, the related-employment rule would not support
15 the aggregation of Felton's earned wages as a quality control specialist at HP and his deemed
16 wages as a search-and-rescue volunteer with Douglas County, as Felton's employment at HP is
17 completely dissimilar to his activities as a search-and-rescue volunteer.

18 **1. Nevada Law Does Not Support the Aggregation of Earned Wages and**
19 **Deemed Wages for Volunteers Such as Felton.**

20 Generally, the average monthly wage for an injured employee covered under the Nevada
21 Industrial Insurance Act is governed by NRS 616A.065, which provides as follows:

22 "Except as otherwise provided in subsection 3, 'average monthly wage' means
the lesser of:

- 23 (a) The monthly wage actually received or deemed to have been received by
24 the employee on the date of the accident or injury to the employee,
excluding remuneration from employment:
25 (1) Not subject to the Nevada Industrial Insurance Act or the Nevada
Occupational Diseases Act; and
26 (2) For which coverage is elective, but has not been elected; or
27 (b) One hundred fifty percent of the state average weekly wage as most recently
computed by the Employment Security Division of the Department of
28 Employment, Training and Rehabilitation during the fiscal year preceding
the date of the injury or accident, multiplied by 4.33."

1 NRS 616A.065(1). (Emphasis added).

2 The Nevada legislature has delegated by statute to the Administrator of the Division of
3 Industrial Relations the authority to promulgate the method of determining the average monthly
4 wage. *See* NRS 616C.420; *see also* NRS 616A.400; and NAC 616A.420-447. Accordingly, the
5 Division of Industrial Relations has issued NAC 616C.447, which provides as follows:

6 The average monthly wage of an employee who is employed by two or more
7 employers covered by a private carrier or by a plan of self-insurance on the
8 date of a disabling accident or disease is equal to the sum of the wages
9 earned or deemed to have been earned at each place of employment. The
insurer shall advise an injured employee in writing of his or her entitlement
to compensation for concurrent employment at the time of the initial payment
of the compensation.

10 (Emphasis added).

11 The Court finds that the plain language of the above-cited statute and regulation appears
12 to bar the aggregation of both earned and deemed wages when calculating the average monthly
13 wage (AMW). The relevant statute and regulation (NRS 616A.065 and NAC 616C.447)
14 specifically utilize the disjunctive "or" with respect to the statutory components of the AMW -
15 not the conjunctive "and," and not "and/or." The plain meaning of the cited statute and
16 regulation allow for the AMW to be calculated by "the sum of the wages earned" *or* "the sum of
17 the wages deemed to have been earned." The statute and regulation speaks for themselves and
18 certainly do not mandate or clearly permit that the AMW be calculated by considering "the sum
19 of wages earned" *and* "the sum of wages deemed to be earned," as suggested by the Petitioner.
20 Accordingly, based on the plain, unambiguous wording of the relevant statute and regulation, the
21 aggregation of earned and deemed wages appears to be barred when calculating the AMW for a
22 volunteer such as Felton.

23 **2. Sound public policy militates against exposing private or public employers to**
24 **unknown liability concerning a volunteer's concurrent employment.**

25 Lastly, there is no evidence of any public policy adopted by the legislature showing an
26 intention that Nevada counties, municipalities, and towns, etcetera, to take on immeasurable and
27 unforeseen liabilities based on possible alternative employment by its volunteers. Likewise, there
28 is no evidence of any public policy adopted by the legislature showing an intention to permit

1 through administrative regulations modification of the unambiguous statutory definition of the
2 AMW of volunteers. The language of NRS 616A.130 exists to provide coverage for volunteers at
3 a reasonable rate and has only been expanded by specific provisions adopted by the Nevada
4 Legislature, none of which applied to the Petitioner on March 6, 2012, the date of his accident.¹²
5 See NRS 616A.157 (date of enactment May 21, 2013).

6 In addition, volunteer organizations (such as Douglas County Search-and-Rescue)
7 generally have no knowledge of the concurrent salary or wages of its volunteers, and often no
8 knowledge of concurrent employment at all. Hence, in this Court's opinion it would be roundly
9 unfair to private or public employers to apply NAC 616C.447 to volunteers so as to permit
10 aggregation of wages from concurrent employment.

11 III.

12 CONCLUSION

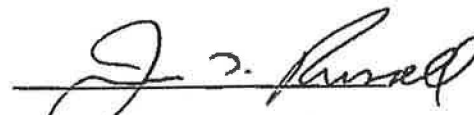
13 In accordance with the rules of statutory construction, applicable case law and
14 sound public policy, the Court affirms the Appeals Officer's February 4, 2015, decision and
15 order, with respect to the non-aggregation of wages from concurrent employment.

16 JUDGMENT

17 Therefore, good cause appearing,

18 IT IS HEREBY ORDERED that the Petition for Judicial Review is hereby DENIED.

19 Dated this 2nd day of February, 2016.

20
21 
22 HON. JAMES T. RUSSELL
23 DISTRICT COURT JUDGE
24
25

26
27 ¹² Volunteers are, frankly, fortunate to have coverage under the Nevada Industrial Insurance Act. Apart from
28 such coverage, it seems to this Court that a volunteer assumes the risk associated with the activity he/she volunteers to perform.

1 **Proposed Order Submitted by:**
2 **ROBERT F. BALKENBUSH, ESQ.**
3 State Bar No. 1246
4 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
5 6590 S. McCarran, Suite B
6 Reno, Nevada 89509
7 Attorneys for Respondents,
8 Douglas County and
9 Public Agency Compensation Trust
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Edward L. Oueilhe, Esq.
1000 E. William Street, Suite 208
Carson City, NV 89701



Angela Jeffries
Judicial Assistant, Dept. 1

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the within and foregoing NOTICE OF ENTRY OF ORDER all caps addressed to:

GREGORY FELTON
PO BOX 2130
STATELINE NV 89449

and that on this date, I prepared for hand delivery, via Reno Carson Messenger Service, a true and correct copy of the aforementioned document to the following party at the address below:

ROBERT F BALKENBUSH ESQ
THORNDAL ARMSTRONG ET AL
6590 S MCCARRAN BLVD #B
RENO NV 89509-6112

and that on this date, I prepared for hand-delivery a true copy of the attached document addressed to:

APPEALS OFFICE
DEPARTMENT OF ADMINISTRATION
1050 EAST WILLIAM STREET, SUITE 450
CARSON CITY NV 89701

DATED: April 26, 2016

SIGNED: Taney A. Sherwood

NEVADA ATTORNEY FOR INJURED WORKERS
1000 East William Street, Suite 208
Carson City, NV 89701 (775) 684-7555
2200 South Rancho Drive, Suite 230
Las Vegas, NV 89102 (702) 486-2830

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding:

NOTICE OF ENTRY OF ORDER

filed in Case Number: 15 OC 00048 1B

X

Does not contain the Social Security Number of any
person.


-OR-

Contains the Social security Number of a person as
required by:

A. A specific State or Federal law, to wit:

-or-

B. For the administration of a public program or
for an application for a Federal or State
grant.


Signature

4/25/16
Date

EDWARD L. OUEILHE, ESQ., deputy
Nevada Attorney for Injured Workers

Attorney for Petitioner,
Gregory Felton

ORIGINAL

DISTRICT COURT CIVIL COVER SHEET

Carson City County, Nevada
Case No. 150C000481B
(Assigned by Clerk's Office)

REC'D & FILED
2015 MAR -2 AM 10:56
SUSAN J. HENNINGSEN
CLERK
DISTRICT COURT

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): GREGORY FELTON	Defendant(s) (name/address/phone): DOUGLAS COUNTY PUBLIC AGENCY COMPENSATION TRUST
Attorney (name/address/phone): Edward L. Oueilhe, Esq., Deputy Nevada Attorney for Injured Workers 1000 E. William Street, Suite 208 Carson City, NV 89701 775-684-7555	Attorney (name/address/phone): Robert F. Balkenbush, Esq. Thorndal Armstrong Delk Balkenbush & Eisinger 6590 S. McCarran Blvd #B Reno, NV 89509 775-786-2882

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <small>(select case type and estate value)</small> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input checked="" type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

March 2, 2015
Date

Signature of initiating party or representative

See other side for family-related case filings.